

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Randy George Beuning,

Debtor: Chapter 13 Case  
Case No. BKY 04-43501-RJK.

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**NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM STAY**

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TO: The Debtor, Debtor's Attorney, Chapter 13 Trustee, United States Trustee, and the other parties in interest specified in Local Rule 9013-3(a).

1. **Community First Bank (Movant)**, a secured creditor of the Debtor herein, by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 2:00 o'clock p.m., on November 4, 2004, before the Honorable Robert J. Kressel, in Courtroom 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, 55415, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than November 1, 2004 which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 26, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2 and Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property owned by the Debtor and subject to Movant's first mortgage lien.

5. The Petition commencing this Chapter 13 Case was filed on June 22, 2004, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local Rule 1070-1 and other applicable rules. This proceeding is a core proceeding.

6. By certain mortgage dated January 16, 2004, in the original principal amount

of \$108,500.00 (**Mortgage**), Movant acquired a first mortgagee's interest in the following real property (**Property**):

Beginning at a point 172 feet South of the Northwest corner of Government Lot 3, in Section 28, Township 123 North of Range 30 West and 20 1/10 feet East of the Quarter Section line running through said Northwest corner of said Government Lot 3; thence due East and parallel with the North line of said Government Lot 3 a distance of 75 feet; thence South a distance of 232 feet to the North line of the Sauk River thence West along the North shore of said Sauk River to a point on said north shore line of said river 20 1/10 feet East of said Quarter Section line and 198 feet due South of the hereinabove described point of beginning; thence Northerly and parallel to said Quarter Section line a distance of 198 feet to the point of beginning and there terminating, Stearns County, Minnesota..

The Mortgage was filed for record in the office of the County Recorder, in and for Stearns County, Minnesota, on February 2, 2004, as document number 1099390.

7. The terms of Debtor's confirmed Chapter 13 plan (**Plan**) require Debtor to make post-petition Mortgage payments directly to Movant when due. Debtor is delinquent with respect to post-petition Mortgage payments for the months of July 2004 through October 2004 in a total amount of \$2,747.28, including late charges. Movant has also incurred attorney's fees and costs in the bringing of this motion.

8. Debtor's Four (4) month delinquency under the terms of the Mortgage constitute cause, within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the automatic stay. Movant does not have, and has not been offered, adequate protection of its interest in the Property.

**WHEREFORE**, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. §362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as the Court may deem to be just, fair and equitable.

Dated this 11th day of October, 2004.

**PETERSON, FRAM AND BERGMAN**  
A Professional Association

BY: /e/ Michael T. Oberle  
**Michael T. Oberle**, Atty. Reg. #130126  
**Attorneys for Movant**  
Suite 300, 50 East Fifth Street  
St. Paul, Minnesota 55101-1197  
Telephone: (651) 291-8955

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Randy George Beuning,

Debtor: Chapter 13 Case  
Case No. BKY 04-43501-RJK.

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AFFIDAVIT IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY

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STATE OF NEW JERSEY   )  
  ) ss.  
COUNTY OF MERCER    )

I, Elizabeth Seipp, your affiant, being first duly sworn on  
oath, state as follows:

1. I am an employee of **Community First Bank (Movant)**, and I have personal knowledge of the facts stated herein.
2. I make this Affidavit in support of a motion to lift, modify or condition the bankruptcy stay.

3. Debtor is the mortgagor on a mortgage dated January 16, 2004 which covers real property located in Stearns County and legally described as follows:

Beginning at a point 172 feet South of the Northwest corner of Government Lot 3, in Section 28, Township 123 North of Range 30 West and 20 1/10 feet East of the Quarter Section line running through said Northwest corner of said Government Lot 3; thence due East and parallel with the North line of said Government Lot 3 a distance of 75 feet; thence South a distance of 232 feet to the North line of the Sauk River thence West along the North shore of said Sauk River to a point on said north shore line of said river 20 1/10 feet East of said Quarter Section line and 198 feet due South of the hereinabove described point of beginning; thence Northerly and parallel to said Quarter Section line a distance of 198 feet to the point of beginning and there terminating, Stearns County, Minnesota.,

and which is commonly known as: 16869 Oster Point Road, Cold Spring, MN 56320. The mortgage was given to secure a promissory note. Copies of the note and the mortgage are attached hereto as Exhibit A and Exhibit B, respectively, and incorporated herein by this reference. The mortgage was assigned to Movant.

4. On or about June 22, 2004, Debtor filed a Petition under Chapter 13 of Title 11 U.S. Code in the United States Bankruptcy Court for the District of Minnesota.

5. Movant filed a Proof of Security Interest Claim with the Court on or about August 23, 2004.

6. Debtor's Chapter 13 Plan (**Plan**) provides that Debtor will maintain payments due during the pendency of this case and cure an existing default within a reasonable time.

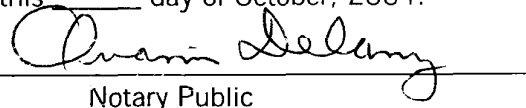
7. Debtor has failed to make Four (4) payments, which were due during the pendency of this case, resulting in an arrearage of \$2,747.28, including late charges. Movant has also incurred attorney's fees and costs in the bringing of this motion.

8. I have read the Motion in this matter, and it is true to the best of my knowledge, information and belief.

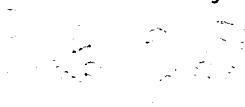
9. Further, I saith not.

A handwritten signature in cursive script, reading "Elizabeth Quipp", written over a horizontal line.

Subscribed and sworn to before me  
this 5<sup>th</sup> day of October, 2004.

A handwritten signature in cursive script, reading "Quinn Delany", written over a horizontal line.

Notary Public

A faint, circular notary seal, likely for the State of New York, with some illegible text around the perimeter.

25-04  
249.55

DELL

24965  
MORTGAGE REGISTRATION TAX  
*Randy R. Schriber*  
STEARN'S COUNTY AUDITOR  
*Brenda Stanger*  
OFFICE AUDITOR

1099390

04 FEB -2 PM 4:08

COUNTY RECORDER  
STEARN'S COUNTY, MN  
DIANE GRUNDHOEFER

BY *LMW* DEPUTY

[Space Above This Line For Recording Data]

## MORTGAGE

MIN 1000381-1001832938-4

Return To:  
RETURN TO: CRESCENT MORTGAGE  
COMPANY  
5881 GLENDRIDGE DR - STE  
170, ATLANTA, GA 30328

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated January 16, 2004, together with all Riders to this document.

BEUNING 1001832938  
MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3024 1/01

VMP-6A(MN) (0005).01

Page 1 of 15 MW 05/00.01 IntraMW 05/00

VMP MORTGAGE FORMS - (800)821-7291

✓ Notations Title  
env



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TRES09

040003142  
MR STATE X  
PAID  
\$249.55

2/02/2004  
13:36:44

SCR 1 of 20



(B) "Borrower" is RANDY BEUNING a single person

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is AMERICAN CHOICE LENDING INC

Lender is a CORPORATION  
organized and existing under the laws of THE STATE OF MINNESOTA  
Lender's address is 5700 GREEN CIRCLE DRIVE, MINNETONKA, IL 55343

(E) "Note" means the promissory note signed by Borrower and dated January 16, 2004  
The Note states that Borrower owes Lender One Hundred Eight Thousand Five Hundred  
and no/100 Dollars

(U.S. \$108,500.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic  
Payments and to pay the debt in full not later than February 1, 2034

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the  
Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges  
due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following  
Riders are to be executed by Borrower [check box as applicable]:

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> ARM
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify] ARM

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,  
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,  
non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other  
charges that are imposed on Borrower or the Property by a condominium association, homeowners  
association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by  
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic  
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit  
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller  
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse  
transfers.

1001832938

1/14/04-6A(MN) 100091 01

1001832938

Page 2 of 15

Initials: RB

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Form 3024 1/01

SCR 2 of 20

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_ (Seal)  
RANDY BEUNING -Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

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STATE OF MINNESOTA, Stearns

County ss:

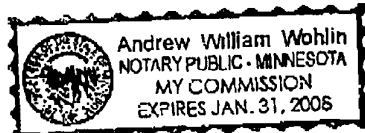
On this 16<sup>th</sup> day of January, 2004

, before me appeared

RANDY BEUNING

A Single person

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free act and deed.



Andrew Wohlin  
Notary Public  
My Commission Expires: November 26, 3150  
Jan 31, 2008

This instrument was drafted by:

Crescent Mortgage  
5881 Glendridge Drive Suite 170  
Atlanta, GA 30328

Tax statements for the real property described in this instrument should be sent to:

Randy Beuning  
16869 Oster Point Road  
Cold Spring, MN 56320

1001832938

1001832938

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UMP-6A(MN) (0005) 01

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Initials: RB

Form 3024 1/01

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## LEGAL DESCRIPTION

Beginning at a point 172 feet South of the Northwest corner of Government Lot 3, in Section 28, Township 123 North of Range 30 West and 20 1/10 feet East of the Quarter Section line running through said Northwest corner of said Government Lot 3; thence due East and parallel with the North line of said Government Lot 3 a distance of 75 feet; thence South a distance of 232 feet to the North line of the Sauk River; thence West along the North shore of said Sauk River to a point on said North shore line of said river 20 1/10 feet East of said Quarter Section line and 198 feet due South of the hereinabove described point of beginning; thence Northerly and parallel to said Quarter Section line a distance of 198 feet to the point of beginning and there terminating, Stearns County, Minnesota. OK

16869 Oster Point Road  
Cold Spring, Minnesota 56320  
Abstract Property

Our File Number: 04MN00171

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:   Randy George Beuning,

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MEMORANDUM OF LAW

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Community First Bank (**Movant**) submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

**FACTS**

Movant holds a valid, duly perfected mortgage on certain real property owned by Debtor. Debtor's confirmed Chapter 13 Plan (**Plan**) requires Debtor to make post-petition mortgage payments directly to Movant, when due. Debtor is delinquent in respect to post-petition mortgage payments for the months of July 2004 through October 2004 in the amount of \$2,747.28.

**ARGUMENT**

Under §362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. §362(d)(1). Debtor has failed to make the payments required by the terms of the Plan. Such a failure constitutes cause for lifting the automatic stay pursuant to 11 U.S.C. §362(d)(1). First Federal Savings and Loan

Association of Minneapolis v. Whitebread, 18 B.R. 192 (Bkrtcy. D. Minn. 1982).

Furthermore, debtor has otherwise failed to provide Movant with adequate protection of its interest in the property.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re Tainan, 48 B.R. 250 (Bkrtcy E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrtcy. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stay of 11 U.S.C. §362(a) and authorizing it to foreclose its mortgage on the property.

Dated this 11th day of October, 2004.

**PETERSON, FRAM AND BERGMAN**  
A Professional Association

BY: /e/ Michael T. Oberle  
Michael T. Oberle  
Atty. Reg. #130126

**Attorneys for Movant**  
Suite 300, 50 East Fifth Street  
St. Paul, Minnesota 55101  
Telephone: (651) 291-8955

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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**In Re:     Randy George Beuning,**

**Debtor: Chapter 13 Case  
Case No. BKY 04-43501-RJK.**

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**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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I, Michael T. Oberle, employed by **PETERSON, FRAM AND BERGMAN, P.A.**, attorneys licensed to practice in this court, with an office at Suite 300, 50 East Fifth Street, St. Paul, MN, 55101, declare that on October 11, 2004 I served the annexed: a) Notice of Hearing and Motion for Relief from Stay, b) Affidavit in Support of Motion for Relief from Stay, c) Memorandum of Law, and d) proposed Order for Relief upon each of the parties listed below by mailing to each of them a copy of each thereof, enclosed in an envelope, first class postage prepaid, and by depositing same in the post office at St. Paul, Minnesota, directed to them at their last known addresses, as follows:

United States Trustee  
300 S 4th St # 1015  
Minneapolis MN 55415-1329

Randy George Beuning  
16869 Oster Point Road  
Cold Spring, MN 56320

Michael J. Farrell  
Chapter 13 Trustee  
P.O. Box 519  
Barnesville, MN 56514

Stephen L. Heller, Esq.  
606 - 25th Avenue South, Suite 110  
St. Cloud, MN 56301

And I declare, under penalty of perjury, that the foregoing is true and correct.

Signed: /e/ Michael T. Oberle

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:           Randy George Beuning,

Debtor: Chapter 13 Case  
Case No. BKY 04-43501-RJK.

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**ORDER FOR RELIEF FROM AUTOMATIC STAY**

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The above-entitled matter came before the Court on November 4, 2004, on the motion of Community First Bank (**Movant**) seeking relief from the automatic stay of 11 U.S.C. §362(a). Based upon the statements of counsel and all of the files, records and proceedings herein, the Court now finds that cause exists entitling Movant to the requested relief.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the automatic stay of 11 U.S.C. §362(a) is immediately terminated as to Movant; and, Movant, its successors or assigns, are hereby authorized to foreclose pursuant to Minnesota law that certain Mortgage dated January 16, 2004, filed for record in the office of the County Recorder in and for Stearns County, Minnesota, on February 2, 2004, and recorded as Document No. 1099390 and covering real property located in Stearns County, Minnesota, which is legally described as follows:



Beginning at a point 172 feet South of the Northwest corner of Government Lot 3, in Section 28, Township 123 North of Range 30 West and 20 1/10 feet East of the Quarter Section line running through said Northwest corner of said Government Lot 3; thence due East and parallel with the North line of said Government Lot 3 a distance of 75 feet; thence South a distance of 232 feet to the North line of the Sauk River thence West along the North shore of said Sauk River to a point on said north shore line of said river 20 1/10 feet East of said Quarter Section line and 198 feet due South of the hereinabove described point of beginning; thence Northerly and parallel to said Quarter Section line a distance of 198 feet to the point of beginning and there terminating, Stearns County, Minnesota..

Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2004.

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Robert J. Kressel  
United States Bankruptcy Judge